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PRESIDING OFFICER'S  
RULING NO. MC96-3/22

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications

Docket No. MC96-3

PRESIDING OFFICER'S RULING DENYING MOTIONS TO COMPEL  
AND MOTIONS TO MODIFY THE COMMISSIONS RULES OF PRACTICE

(October 25, 1996)

David Popkin filed a document dated September 30, 1996, containing three motions.<sup>1</sup> The first is a motion to compel responses to interrogatories DBP/USPS-T3-19 (e) through (i) and (q) through (w), and DBP/USPS-T7-4-6, which ask what guidelines govern access to post office box sections. The second is a motion to compel a response to DBP/USPS-T8-16(d), which asks the Postal Service to provide a copy of the library reference that it cited in response to an earlier interrogatory. The third is a motion to modify the Commission's Rules of Practice to require parties that file interrogatory responses that cite library references to include copies of such library references in their responses, under certain circumstances. The Postal Service opposed all three motions.<sup>2</sup> Douglas F. Carlson filed a motion in

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<sup>1</sup> This document was received by the Commission on October 4, 1996.

<sup>2</sup> Response of United States Postal Service to Motion of David B. Popkin to Compel Responses to Interrogatories, October 11, 1996, ("Postal Service Response"); Answer in Opposition to Motion of David B. Popkin to Compel Response to DBP/USPS-T8-16(d) and to Motion of

support of Mr. Popkin's motion to modify the Commission's Rules of Practice.<sup>3</sup>

Mr. Popkin moves to compel responses to these written interrogatories on the ground that he did not receive complete responses during oral cross-examination. Motion at 1. The Postal Service maintains that Mr. Popkin had a full opportunity to ask these questions orally during the hearings of September 10 and 11, 1996. It argues, in effect, that he waived his right to compel answers to these written interrogatories by availing himself of the opportunity to orally cross-examine these witnesses on these topics. Postal Service Response at 1-2.

The transcript does not indicate that Mr. Popkin waived his right to receive written responses to these interrogatories. However, with respect to the disputed interrogatories to witness Needham, DBP/USPS-T7-4-6, her oral responses appear to be as thorough as written responses would have been, and therefore, further written responses will not be required. With respect to the disputed parts of interrogatory DBP/USPS-T3-19 to witness Landwehr, however, further limited institutional responses are warranted. The motion to compel a response to DBP/USPS-T8-16(d) will be treated as moot. The motions to modify the Commission's Rules of Practice are considered premature.

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David B. Popkin to Modify the Commission's Rules of Practice, October 11, 1996 ("Postal Service Answer").

<sup>3</sup> Douglas F. Carlson Motion in Support of Motion of David B. Popkin to Modify Rules of Practice Concerning Library References, dated October 8, 1996 ("Carlson Motion"). This document was received by the Commission on October 16, 1996.

***Interrogatories DBP/USPS-T7-4 through 6 to witness Needham.***

Mr. Popkin's oral cross-examination of witness Needham appears to have covered the same ground as these written interrogatories. See Tr. 3/822. Significant objections were not interposed by witness Needham's counsel, and her oral answers were as responsive and thorough as if they had been written. Mr. Popkin, therefore, appears not to have been prejudiced by failing to receive written responses from witness Needham. As to them, his motion will be denied on the ground that her oral responses were adequate, and written responses would be unduly repetitious. See 5 U.S.C. § 556(d).<sup>4</sup>

***Interrogatories DBP/USPS-T3-19 (e) through (i) and (q) through (w) to witness Landwehr.*** Parts (e) through (i) of Interrogatory DBP/USPS-T3-19 elaborate upon the question of what general guidelines govern local postmasters' decisions to set hours for box holder access to box sections. Parts (q) through (w) of that interrogatory elaborate upon the question of what general guidelines govern local postmasters' decisions to give box holders keys to access postal lobbies.

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<sup>4</sup> DBP/USPS-T7-4 has multiple parts, all of which elaborate upon the question of what definition of "non-resident" the Postal Service will use to determine who must pay the non-resident fee for box rental. Witness Needham's testimony responds thoroughly at Tr. 3/789-95. DBP/USPS-T7-5 asks if witness Needham considers the proposed non-resident fee for box rental to be discriminatory. Witness Needham responded thoroughly at Tr. 3/823-26. DBP/USPS-T7-3(b) and (c) asked whether the Postal Service plans to charge distinct fees for other postal services that are based on the status of the customer, rather than the characteristics of the service provided him. DBP/USPS-T7-6 asks if the Postal Service referred DBP/USPS-T7-3(b) and (c) to the postal employee best able to give an informed response. Witness Needham plausibly responds that she is that employee. Tr. 3/824-27.

Mr. Popkin cannot be fairly characterized as having waived his right to receive written responses to these interrogatories. During the hearings of September 10, 1996, Mr. Popkin asked witness Landwehr whether there were formal guidelines that governed decisions of local postmasters to set the hours that box renters have access to their boxes. The witness responded that he knew of none, although the considerations should be whether there is sufficient box holder demand, and adequate security for allowing access after business hours. Mr. Popkin then asked whether there are any general guidelines for determining what constitutes adequate security. Witness Landwehr responded that he was not qualified to answer, and that the Inspection Service might be better qualified to answer. Tr. 3/524-25. Mr. Popkin requested that the Postal Service provide an institutional response to his question. Tr. 3/526. At that point, witness Landwehr's counsel warned that Mr. Popkin's oral questions were similar to an outstanding set of interrogatories submitted by Mr. Popkin to which the Postal Service had "a lot of objections." Counsel asserted that the Postal Service would not voluntarily provide the guidelines Mr. Popkin requested. Ibid.

Before questioning other witnesses, Mr. Popkin informed the Presiding Officer that he had been conducting his oral cross-examination of witness Landwehr on the assumption that he could ask some questions from the outstanding set of interrogatories orally without waiving his right to receive written answers to others. If he could not preserve his right to receive written answers to others from that set, he explained, he would like to ask them orally. Tr. 3/785.

When the Presiding Officer asked if witness Landwehr could be recalled, his counsel said yes, and stated that the Postal Service would prefer to have witness Landwehr respond to the outstanding interrogatories orally. Tr. 3/788.

In asserting waiver, the Postal Service emphasizes the following language used by the Presiding Officer when he recalled witness Landwehr to the stand

The Postal Service agreed to recall Mr. Landwehr to respond to oral questions from Mr. David Popkin in lieu of providing written responses to follow-up interrogatories.

I understand that the Postal Service agrees to this procedure in large measure to avoid additional extensive written motion practice. . .

Tr. 4/1321. In recalling witness Landwehr for oral cross-examination, it was hoped that compromise and mutual accommodation by both sides would eliminate the need for written responses to pending interrogatories. Little compromise or accommodation, however, materialized.<sup>5</sup>

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<sup>5</sup> When Mr. Popkin asked about general guidelines that govern the setting of hours for box section access [the essence of pending interrogatories DBP/USPS-T3-19(e) through (i)], Postal Service counsel insisted that he accept witness Landwehr's answers of the previous day [i.e., that he didn't know of any, but wasn't qualified to respond], and reiterated the Postal Service's objections to providing any institutional response. Mr. Popkin stood by his request to be allowed to follow up on any answer denying knowledge of general guidelines. Tr. 4/1325-26. At this point in the transcript, witness Landwehr volunteered that he had found a relevant guideline at § DMMT 951.74, but did not represent that it resulted from a thorough search. When Mr. Popkin asked about general guidelines that govern giving box holders keys for accessing postal lobbies [the equivalent of DBP/USPS-T3-19(q) through (w)], witness Landwehr responded that he was not aware of any. Mr. Popkin then asked for an institutional response to

In lieu of compelling specific responses to DBP/USPS-T3-19(e) through (i) and (q) through (w), I will direct the Postal Service to conduct a limited search for general guidelines governing access to box sections and postal lobbies, and to provide Mr. Popkin with the results. General guidelines that govern access to post office boxes are potentially relevant to the Postal Service's proposed non-resident box rental fee to the extent that they indicate how access to box sections might vary among facilities. Such variations potentially affect the need for, and value of, providing alternatives to "resident" box rental. Mr. Popkin's requests to be provided with such guidelines have been timely.<sup>6</sup> The relevance of such guidelines to the Postal Service's proposal is indirect. Therefore, it warrants making general inquiries of appropriate postal managers, but does not justify an extensive search of the records of the Postal Inspection Service, which the Postal Service appears anxious to avoid. Tr. 3/526.

Accordingly, the Postal Service is directed to provide an institutional response to Mr. Popkin's request for copies of any general guidelines that govern the decisions of local postmasters to set hours for access to box sections, or to provide box

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this question. Postal Service counsel objected on the ground that his request "could have been asked during discovery, and it pertains to the testimony of a witness who is not a postal employee." Tr. 4/1327. However, Mr. Popkin's request was initially made in timely discovery, and witness Landwehr is a postal employee.

<sup>6</sup> These requests were initially made in DBP/USPS-T3-3, filed August 9, 1996, and followed up with DBP/USPS-T3-19, filed September 5, 1996.

holders with keys to postal lobbies. To minimize the burden on the Postal Service, it is directed to examine administrative manuals that have nationwide applicability to postmasters for such guidelines. It is also directed to ask the postal manager most directly responsible for national box rental policy and programs to identify any such guidelines of which he or she is aware. Finally it is directed to ask the Postal Inspection Service official most directly responsible for security policy and programs for postal lobbies nationwide to identify any such guidelines of which he or she is aware.

**Interrogatory DBP/USPS-T8-16(d).** DBP/USPS-T8-16(d) requests that witness Needham supply Mr. Popkin with a copy of Postal Service Library Reference SSR-137. The Postal Service responded that SSR-137, like all library references, is available for inspection and copying at the Commission or at Postal Service headquarters. Mr. Popkin complains that it is unreasonable to require him to travel from New Jersey to Washington, D.C. in order to obtain a copy of a relevant library reference. Motion at 2.

The Postal Service asserts that Mr. Popkin could have inspected and copied this library reference when he attended the Commission's hearings of September 9-12, 1996. It has nevertheless loaned Mr. Popkin a copy of the library reference, and contends that his motion to compel is now moot. Postal Service Answer at 2. Mr. Popkin's motion to compel a response to this interrogatory will be considered moot.

**Motions to Modify the Commission's Rules of Practice.**

Mr. Popkin asks that the Commission modify its Rules of Practice

to require that when a party cites a library reference in an interrogatory response, and all of the parties receiving that response are located more than 50 miles from Washington, D.C., that the party be required to furnish a copy of the library reference with its response. Motion at 2. Douglas B. Carlson filed what he characterizes as a "supporting motion," proposing that a party be required to furnish a copy of a library reference that it cites in an interrogatory response to any participant that requests it, if doing so is "practical and reasonable." Carlson Motion at 3.

The Postal Service argues that the appropriate vehicle for these proposals is a rulemaking published in the FEDERAL REGISTER, not a motion filed at this late date in this limited docket. Postal Service Answer at 1-3. It argues that requiring library references to be provided to all or a subset of all participants is inconsistent with the purpose of allowing hearing materials to be filed as library references. It notes that Rule 31(b) of the Commission's Rules of Practice, and Rule 5 of our Special Rules of Practice authorize parties to file library references "when documentation or materials are too voluminous reasonably to be distributed." Postal Service Answer at 4. The Postal Service, however, declares its willingness to informally accommodate parties that wish to inspect library references if they do not otherwise have reasonable opportunities to inspect them. Ibid.

The Postal Service's offer to informally facilitate inspection of library references where access is otherwise a problem should be given a chance to work. Accordingly, these motions of Mr. Popkin and Mr. Carlson are denied as premature.



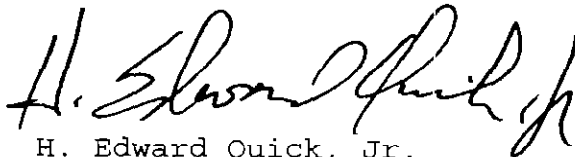
## RULING

1. The David B. Popkin Motion to Compel Responses to Interrogatories, dated September 30, 1996, is denied with respect to Interrogatories DBP/USPS-T7-4 through 6, and DBP/USPS-T8-16(d).

2. The David B. Popkin Motion to Compel Responses to Interrogatories, dated September 30, 1996, is granted with respect to DBP/USPS-T3-19 parts (e) through (i) and (q) through (w), to the extent described in the body of this ruling. The results of the search described there are to be provided on or before November 4, 1996.

3. The David B. Popkin Motion to Modify the Commission's Rules of Practice, dated September 30, 1996, is denied.

4. The Douglas F. Carlson Motion in Support of Motion of David B. Popkin to Modify Rule of Practice Concerning Library References, dated October 8, 1996, is denied.



H. Edward Quick, Jr.  
Presiding Officer